

February 8, 2019

Douglas Hibbard
Chief, Initial Request Staff
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Washington, D.C. 20530-0001
Tel: (202) 514-3642

Re: Freedom of Information Act Request

Dear Mr. Hibbard:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce the following records within 20 business days:

1. Any e-mail correspondence, including attachments, sent by personnel within the office of Special Counsel Robert Mueller to personnel elsewhere in the Justice Department or executive branch that contests, questions the accuracy of, or raises objections to allegations that Michael Cohen has informed, or confirmed for, Justice Department personnel that President Donald Trump instructed Cohen to lie about or otherwise mischaracterize relevant facts in testimony before Congress.

These allegations were contained in a BuzzFeed article entitled “President Trump Directed His Attorney Michael Cohen to Lie to Congress About the Moscow Tower Project,” which was published on January 17, 2019 (available at <https://www.buzzfeednews.com/article/jasonleopold/trump-russia-cohen-moscow-tower-mueller-investigation>). This request covers records held by the office of Special Counsel Robert Mueller for the period from January 17, 2019, to January 18, 2019.

We also request any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a

record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

We are the editor-in-chief and senior editor for Lawfare, an online publication dedicated to informing public understanding on operations and activities of the government. Lawfare is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. This request is submitted in connection with Lawfare’s mission to publish information that is likely to contribute significantly to the public understanding of federal agency activities related to law and national security. Lawfare does not have commercial interests. This request is submitted in connection with Lawfare’s mission to publish information that is likely to contribute significantly to the public understanding of executive branch activities relating to law and national security. The BuzzFeed article referenced in our request reported Cohen had informed personnel in the office of Special Counsel Robert Mueller that Trump had directed Cohen to lie about certain Russia business dealings—a claim the special counsel’s office later denied. Information regarding the Justice Department’s response to this report has a direct bearing on the public’s understanding of the Mueller investigation and Justice Department operations, and thus is in the public interest.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as “a representative of the news media.” *Id.* Lawfare is a “news media organization[.]” that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents transmitted via FOIA on our website, <https://www.lawfareblog.com>, and to provide information about and analysis of those documents as appropriate.

EXPEDITED PROCESSING

FOIA requires provides for expedited processing where a requestor “demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). It defines “compelling need” to include situations

where a “request [is] made by a person primarily engaged in disseminating information” and there exists an “urgency to inform the public concerning actual or alleged Federal Government activity.” Id. § 552(a)(6)(E)(v). Relevant Justice Department regulations further define “compelling need” to include requests relating to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(iv).

Lawfare is an organization primarily engaged in the dissemination of information. This request addresses the Justice Department’s public response to a media report regarding potentially serious allegations against the president in an ongoing high-profile investigation. There is an urgency to inform the public regarding this response, which relates to a matter of exceptional media interest and raises questions about government integrity that could affect public confidence.

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Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact us by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

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